

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JOHN KENNEALLY, on behalf of
12 himself and all other similarly situated,
13
14 Plaintiff,
15 vs.
16 BOSA CALIFORNIA LLC, and BOSA
17 DEVELOPMENT CALIFORNIA INC.,
18 Defendants.

CASE NO. 09-CV-2039 WQH JMA

ORDER

17 HAYES, Judge:

18 The matter before the Court is the Ex Parte Application to Strike, Quash and/or
19 Expunge Attorney Lien filed by Plaintiff. (ECF No. 63).

20 **BACKGROUND**

21 On September 18, 2009, Plaintiff John Kenneally ("Plaintiff"), represented by attorney
22 Gregory Weston ("Weston"), filed a Complaint against Defendants First American Title Co.
23 ("First American"), Bosa California LLC and Bosa Development California Inc. (collectively,
24 "Bosa"), as well as Bank of Nova Scotia and HSBC Bank USA N.A. (collectively, "Lenders")
25 (ECF No. 1). On November 18, 2009, Plaintiff filed an Amended Complaint against
26 Defendants. (ECF No. 3). Plaintiff alleged that Bosa fraudulently misrepresented the square
27 footage of a condominium that Plaintiff purchased and that the discrepancy in measurement
28 greatly reduced the value of the property. (ECF No. 3 at 13-16).

1 On December 28, 2009, Bosa filed a Motion to Dismiss First Amended Complaint.
2 (ECF No. 23). On December 28, 2009, the Lenders filed a Motion to Dismiss First Amended
3 Complaint. (ECF No. 24).

4 On January 4, 2010 and on January 5, 2010, Jared H. Beck of the firm Beck & Lee
5 Business Trial Lawyers (“Beck”) filed a Notice of Appearance as attorney for all Plaintiffs.¹
6 (ECF Nos. 25, 29).²

7 On February 12, 2010, First American filed a Motion to Dismiss First Amended
8 Complaint. (ECF No. 46). On April 28, 2010, this Court granted in part and denied in part the
9 Motion to Dismiss filed by Defendant Bosa and granted the Motions to Dismiss filed by First
10 American and the Lenders. (ECF No. 54). On May 12, 2010, Defendant Bosa filed an Answer.
11 (ECF No. 55).

12 On July 1, 2010, the Honorable Magistrate Judge Jan M. Adler held an Early Neutral
13 Evaluation Conference. In a letter dated August 12, 2010, Plaintiff’s attorney Gregory Weston
14 informed Beck that Kenneally did not consent to Beck’s representation in this matter and
15 requested Beck file a notice of withdrawal. In a letter dated September 21, 2010, Beck sent
16 a copy of the Notice of Charging Lien to Weston. The Notice of Charging Lien asserts that
17 there is an express or implied contract between Beck and Plaintiff as well as an understanding
18 that Beck will receive payment out of any recovery. In a letter dated October 12, 2010,
19 Weston acknowledged receipt of the Notice of Charging Lien and requested records of time
20 spent by Beck as well as the amount to which Beck believes he is entitled.

21 On October 14, 2010, Magistrate Judge Adler issued an Order stating: “Plaintiff John
22 Kenneally (‘Plaintiff’) and the remaining defendants [Bosa California LLC and Bosa
23 Development California Inc.] in this case have reached a settlement of Plaintiff’s individual
24 claims in this matter. Accordingly, a joint motion for dismissal shall be filed with the Court
25” (ECF No. 62 at 1).

26 ¹ This case was filed as a class action.

27 ² The Notices of Appearance (ECF Nos. 25, 29) are identical with the exception that the
28 Notice of Appearance filed on January 5, 2010 contains address and telephone information for Beck.

1 On October 19, 2010, Plaintiff filed an Ex Parte Application to Strike, Quash and/or
2 Expunge Attorney Lien. (ECF No. 63).

3 On October 20, 2010, Beck filed a complaint in a Florida state court, asserting three
4 claims: (1) breach of contract; (2) quantum meruit; and (3) adjudication and imposition of
5 attorney's charging lien. (ECF No. 64-2 at 2).

6 On October 25, 2010, Beck filed an Opposition to Plaintiff's Ex Parte Application (ECF
7 No. 64). On October 26, 2010, Plaintiff filed a Reply in Support of Plaintiff's Ex Parte
8 Application (ECF No. 65).

9 On March 10, 2011, Plaintiff filed a Notice of Related Cases Pursuant to Civil Local
10 Rule 40.1(E). (ECF No. 66). Plaintiff identified related cases including the Florida state court
11 case filed by Beck on October 20, 2010, and *First American Title Insurance Co. v. Kenneally*
12 *et al*, 11cv264 WQH (JMA), (filed Feb. 8, 2011). *First American Title Insurance Co.* is a
13 complaint for statutory interpleader against Kenneally, Bosa California LLC, Bosa
14 Development California, Inc., the Weston Firm P.C., and Beck & Lee, P.A. (ECF No. 1).

15 To date, Beck has not withdrawn his representation of Plaintiff or otherwise been
16 terminated as an attorney in this case.

17 DISCUSSION

18 Plaintiff moves the court to strike, quash, or expunge the "Notice of Charging Lien"
19 sent by Beck to Weston via letter, dated September 21, 2010. Plaintiff contends that the Court
20 should exercise ancillary jurisdiction to expunge the charging lien. Plaintiff contends that
21 adjudicating the dispute may require an "evidentiary hearing to determine what funds, if any,
22 [Beck] may be owed either as fees or in quantum meruit and thereby spare the parties ... from
23 the considerable expense of defending [Beck's] lawsuit against them in Miami." (ECF No. 65
24 at 4).

25 Beck contends the Court lacks jurisdiction over this lien dispute. Beck contends that
26 there is a pending action in Florida "where [Beck] is located and performed all of [his] work
27 on behalf of Plaintiff - to adjudicate the lien." (ECF No. 64 at 3).

28 The issue before the Court is whether the exercise of ancillary jurisdiction to determine

1 the validity of the notice of charging lien against the settlement. “Ancillary jurisdiction is the
2 power of a court to adjudicate and determine matters incidental to the exercise of its primary
3 jurisdiction over a cause under review.” *United States v. Sumner*, 226 F.3d 1005, 1013 (9th
4 Cir. 2000) (“That power extends to proceedings concerned with the pleadings, the processes,
5 the records, or the judgment in the principal case.”) (citation omitted). Ancillary jurisdiction
6 is asserted: “(1) to permit disposition by a single court of claims that are, in varying respects
7 and degrees, factually interdependent; and (2) to enable a court to function successfully, that
8 is, to manage its proceedings, vindicate its authority, and effectuate its decrees.” *Kokkonen*
9 *v. Gardien Life Ins. Co. of America*, 511 U.S. 375, 380 (1994) (citations omitted); *see also*
10 *In re Ray*, 624 F.3d 1124, 1135 (9th Cir. 2010).

11 The Ninth Circuit has held that “ancillary jurisdiction exists over attorney fee disputes
12 collateral to the underlying litigation.” *Federal Sav. and Loan Ins. Corp. v. Ferrante*, 364 F.3d
13 1037, 1041 (9th Cir. 2004) (citations omitted). The Ninth Circuit stated that “[d]etermining
14 the legal fees a party to a lawsuit properly before the court owes its attorney, with respect to
15 the work done in the suit being litigated, easily fits the concept of ancillary jurisdiction.”
16 *Federal Sav. and Loan Ins. Corp.*, 364 F.3d at 1041 (quoting *Jenkins v. Weinshienk*, 670 F.2d
17 915, 919 (10th Cir. 1982). However, the Ninth Circuit has held that ancillary jurisdiction
18 should not be invoked, where the claim is “unrelated to the underlying action[.]” *Federal Sav.*
19 *and Loan Ins. Corp.*, 364 F.3d at 1041-42 (holding that the district court lacked jurisdiction
20 over a motion to adjudicate attorney’s fees relating to a promissory note) (citing *Jenkins*, 670
21 F.2d at 919 (finding that “the federal court has no jurisdiction to adjudicate the amount of fees
22 properly owing between [attorney and client] with respect to matters unrelated to litigation
23 before the court.”)).

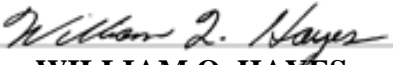
24 In this case, the notice of charging lien relates to the representation of Plaintiff by Beck
25 in this suit. The dispute over attorney fees arose during the course of this action with respect
26 to work performed in this action. The Court finds that ancillary jurisdiction exists. The Court
27 exercises ancillary jurisdiction over the charging lien as it relates to the settlement in this
28 action.

1 **CONCLUSION**

2 Plaintiff's Ex Parte Application to Strike, Quash and/or Expunge Attorney Lien
3 (ECF No. 63) will remain pending.

4 IT IS HEREBY ORDERED that no later than fifteen days from the date of this
5 Order, Beck shall respond to the Ex Parte Application to Strike, Quash and/or Expunge
6 Attorney Lien on the merits. Plaintiff may reply no later than fifteen days thereafter.

7 DATED: March 22, 2011

8 
9 **WILLIAM Q. HAYES**
United States District Judge